

CCRB INVESTIGATIVE RECOMMENDATION

Investigator: Julian Phillips	Team: Squad #5	CCRB Case #: 201807936	<input checked="" type="checkbox"/> Force	<input type="checkbox"/> Discourt.	<input type="checkbox"/> U.S.
			<input checked="" type="checkbox"/> Abuse	<input type="checkbox"/> O.L.	<input type="checkbox"/> Injury
Incident Date(s) Sunday, 09/16/2018 10:21 PM, Monday, 09/17/2018 1:00 AM	Location of Incident: Over the phone: § 87(2)(b)	Precinct: 115	18 Mo. SOL 3/16/2020	EO SOL 3/16/2020	
Date/Time CV Reported Mon, 09/17/2018 2:00 AM	CV Reported At: IAB	How CV Reported: Phone	Date/Time Received at CCRB Tue, 09/25/2018 11:13 AM		

Complainant/Victim	Type	Home Address

Witness(es)	Home Address

Subject Officer(s)	Shield	TaxID	Command
1. POM Scott Hampton	01822	960635	115 PCT
2. POM Anthony Romano	11416	964737	115 PCT
3. POM Juan Lucio	01819	938890	115 PCT
4. POM Luis Guevara	06435	958661	115 PCT

Witness Officer(s)	Shield No	Tax No	Cmd Name
1. POM Brennan Smith	20959	963283	115 PCT
2. POM James Vasek	01950	962147	115 PCT
3. POM John Christensen	25625	962316	115 PCT
4. DTS Randall Litrell	04168	928302	115 PCT
5. POM Matthew Collins	25972	963922	115 PCT

Officer(s)	Allegation	Investigator Recommendation
A.POM Luis Guevara	Abuse: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to arrest § 87(2)(b)	
B.POM Luis Guevara	Abuse: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to damage § 87(2)(b) property.	
C.POM Scott Hampton	Abuse: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton threatened to arrest § 87(2)(b)	
D.POM Juan Lucio	Abuse: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Juan Lucio threatened to arrest § 87(2)(b)	

Officer(s)	Allegation	Investigator Recommendation
E.POM Scott Hampton	Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b)	
F.POM Scott Hampton	Abuse: On September 17, 2018, Police Officer Scott Hampton entered § 87(2)(b), in Queens.	
G.POM Anthony Romano	Abuse: On September 17, 2018, Police Officer Anthony Romano entered § 87(2)(b), in Queens.	
H.POM Scott Hampton	Abuse: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton threatened to arrest § 87(2)(b)	
I.POM Scott Hampton	Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b)	
J.POM Scott Hampton	Abuse: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton damaged § 87(2)(b) property.	
K.POM Scott Hampton	Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b) § 87(2)(b)	
L.POM Scott Hampton	Abuse: On September 17, 2018, Police Officer Scott Hampton entered the basement of § 87(2)(b) in Queens.	
§ 87(4-b), § 87(2)(g)		

Case Summary

On September 17, 2018, § 87(2)(b) filed this complaint with IAB by phone, generating original log number 2018-36407. The CCRB received the complaint on September 25, 2018.

On September 16, 2018, at approximately 10:21 p.m., Police Officer Luis Guevara and other officers from the 115th Precinct responded to a landlord-tenant dispute at § 87(2)(b) in Queens. Earlier that evening, the leaseholder of § 87(2)(b), § 87(2)(b) changed the locks of the building and apartment and removed the belongings of her sub-tenant, § 87(2)(b). After officers arrested § 87(2)(b) and determined that they could not locate keys to the new locks, PO Guevara called § 87(2)(b) whom he had identified as the building owner. PO Guevara told § 87(2)(b) that he would be arrested for illegal eviction if he did not give § 87(2)(b) access to her apartment, and allegedly told § 87(2)(b) that the building door would be broken down if § 87(2)(b) did not open it (**Allegation A: Abuse of Authority**, § 87(2)(g) **Allegation B: Abuse of Authority**, § 87(2)(g)

On September 17, 2019, at approximately 1 a.m., § 87(2)(b)'s wife, § 87(2)(b) and their daughter, § 87(2)(b) arrived at § 87(2)(b), where they met officers including Police Officers Scott Hampton, Juan Lucio, and Anthony Romano, all from the 115th Precinct. PO Hampton and PO Lucio told § 87(2)(b) that she would be arrested for illegal eviction if she did not grant § 87(2)(b) access to § 87(2)(b) (**Allegations C-D: Abuse of Authority**, § 87(2)(g) PO Hampton allegedly shoved § 87(2)(b) (**Allegation E: Force**, § 87(2)(g) PO Hampton and PO Romano entered § 87(2)(b) (**Allegations F-G: Abuse of Authority**, § 87(2)(g) PO Hampton threatened to arrest, and then shoved, § 87(2)(b)'s mother (**Allegation H: Abuse of Authority**, § 87(2)(g) **Allegation I: Force**, § 87(2)(g) PO Hampton closed a door inside the apartment, which allegedly damaged the door (**Allegation J: Abuse of Authority**, § 87(2)(g) PO Hampton allegedly shoved § 87(2)(b) (**Allegation K: Force**, § 87(2)(g) PO Hampton entered the building's basement (**Allegation L: Abuse of Authority**, § 87(2)(g)

§ 87(4-b), § 87(2)(g)

The investigation obtained BWC footage of both incidents, and cellphone footage and audio from the second incident (**Board Review 01-08**).

This case was reassigned from Inv. Mancini to Inv. Phillips on October 30, 2018.

Findings and Recommendations

Allegation (A) Abuse of Authority: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to arrest § 87(2)(b)

Allegation (B) Abuse of Authority: On September 16, 2018, over the phone, Police Officer Luis Guevara threatened to damage § 87(2)(b)'s property.

It is undisputed that § 87(2)(b) and § 87(2)(b) told PO Guevara that § 87(2)(b) had resided in the apartment for several months before the date of the incident. It is also undisputed that § 87(2)(b) was an owner of the building. It is also undisputed that PO Guevara called § 87(2)(b) and told him that he would be arrested if he did not grant entry to § 87(2)(b)

§ 87(2)(b) testified (**Board Review 09**) that several minutes after the call in which PO Guevara threatened him with arrest, PO Guevara called him again and threatened to force open the door if he did not come to the scene to open the door.

PO Guevara (**Board Review 12**) denied that he told § 87(2)(b) that officers would force open the building door if § 87(2)(b) did not open it.

PO Guevara did not activate his BWC during the incident. BWC footage from other officers on scene captured a brief snippet of PO Guevara's telephone call to § 87(2)(b) but no BWC captured the portion of the call in which PO Guevara threatened § 87(2)(b) with arrest and allegedly threatened to make forced entry into the building.

New York City Administrative Code §26-521 (Board Review 13) states that, when an occupant of a dwelling unit has been unlawfully evicted, "[I]t shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit." Patrol Guide Procedure 214-12 and NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) confirm that a person is an occupant of a dwelling if she has lawfully occupied it for at least 30 days, and that officers may threaten to arrest a landlord who refuses to return access to the dispossessed occupant (**Board Review 40-41**).

§ 87(2)(g)

Allegation (C) Abuse of Authority: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton threatened to arrest § 87(2)(b)

Allegation (D) Abuse of Authority: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Juan Lucio threatened to arrest § 87(2)(b)

It is undisputed that § 87(2)(b) was an owner of the property at the time of the incident. It is undisputed that § 87(2)(b) told the officers that she could not unlock the doors to the building and apartment to grant § 87(2)(b) entry, and that PO Hampton and PO Lucio both told her that she would be subject to arrest if she refused to do so.

An audio recording provided by § 87(2)(b) captured a portion of her conversation with the officers (**Board Review 07**). The audio shows that § 87(2)(b) told the officers that she could not allow § 87(2)(b) to enter the apartment because she did not know § 87(2)(b). PO Hampton repeatedly stated that § 87(2)(b) would be arrested if § 87(2)(b) did not grant § 87(2)(b) access to the apartment. PO Lucio stated a single time that § 87(2)(b) would be arrested if § 87(2)(b) did not grant § 87(2)(b) access to the apartment.

§ 87(2)(b) testified that she told the officers that she could not unlock the doors because she did not possess keys to the new locks. § 87(2)(b) similarly testified that § 87(2)(b) told the officers that she could not comply because she did not possess keys to the new locks. § 87(2)(b) added that § 87(2)(b)

§ 87(2)(b) also told the officers that she did not wish to grant § 87(2)(b) access because she did not know § 87(2)(b) to be a tenant.

PO Hampton and PO Lucio both testified (**Board Review 14-15**) that § 87(2)(b) said she did not want to allow § 87(2)(b) to access the building. PO Hampton recounted that he knocked on the window of the first floor apartment, and that the tenant, § 87(2)(b) confirmed to PO Hampton that § 87(2)(b) had resided in the building for more than 30 days.

§ 87(2)(g)

New York City Administrative Code §26-521 (**Board Review 13**) states that, when an occupant of a dwelling unit has been unlawfully evicted, “[I]t shall be unlawful for an owner of a dwelling unit to fail to take all reasonable and necessary action to restore to occupancy an occupant of a dwelling unit.” Patrol Guide Procedure 214-12 and NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) confirm that a person is an occupant of a dwelling if she has lawfully occupied it for at least 30 days, and that officers may threaten to arrest a landlord who refuses to return access to the dispossessed occupant (**Board Review 40-41**).

§ 87(2)(g)

Allegation (E) Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b)

§ 87(2)(b) testified that she, § 87(2)(b) and two relatives who had arrived on scene went to the § 87(2)(b) common hallway to open the door of § 87(2)(b) while the officers remained outside the building. § 87(2)(b) then went downstairs to the first floor hallway to notify the officers that the apartment door was open. PO Hampton then shoved § 87(2)(b) to the side in the hallway before going upstairs. § 87(2)(b) did not indicate that there was anyone present for this force besides herself, PO Hampton, and PO § 87(2)(b).

§ 87(2)(b) testified (**Board Review 17**) that § 87(2)(b) later told her that PO Hampton had pushed her, but § 87(2)(b) did not witness this herself.

PO Hampton denied shoving § 87(2)(b) and denied that he was in the first floor hallway when a civilian opened the door to § 87(2)(b). He recounted that he was standing in the common hallway on the § 87(2)(b) at that time. PO Romano also testified that he was standing in the common hallway on the § 87(2)(b). He did not recall seeing PO Hampton shove § 87(2)(b). PO Lucio testified that he left the scene before this portion of the incident and denied seeing PO Hampton shove § 87(2)(b).

This portion of the incident was not captured on any officer’s BWC.

§ 87(2)(g)

Allegation (F) Abuse of Authority: On September 17, 2018, Police Officer Scott Hampton entered § 87(2)(b) in Queens.

Allegation (G) Abuse of Authority: On September 17, 2018, Police Officer Anthony Romano entered § 87(2)(b) in Queens.

It is undisputed that PO Hampton and PO Romano entered the apartment. It is also undisputed that § 87(2)(b) an occupant of the apartment, told the officers that they could not enter the apartment.

PO Hampton testified that he informed § 87(2)(b) that he would help her reenter her apartment and that § 87(2)(b) stated that she appreciated this. PO Hampton then knocked on the second floor apartment door for approximately 30 to 45 minutes. § 87(2)(b) opened the door, but said that PO Hampton could not enter the apartment. PO Hampton immediately stepped into the apartment. As will be described in greater detail in the section regarding Allegations H-I, PO Hampton recounted that § 87(2)(b) yelled at him after he entered the apartment, and the investigation determined that he physically forced her to go back into her bedroom.

PO Romano similarly recounted that he entered the apartment in order to escort § 87(2)(b) to her room. He could not recall if anyone inside the apartment objected to the officers entering the apartment.

Absent an emergency, it is NYPD policy that officers are not permitted to physically assist an illegally evicted occupant in gaining entry to her dwelling unit. NYPD Legal Bureau Bulletin Vol. 49 No. 3 (Aug. 2019) (Board Review 41). If any co-tenant of a residence is present and objects to officers entering that residence, then officers are not permitted to enter, regardless of whether another co-tenant consents to the entry. People v. Watson, 101 A.D.3d 913 (2nd Dept. 2012) (**Board Review 42**); Georgia v. Randolph, 547 U.S. 103 (2006) (**Board Review 43**).

§ 87(2)(g)

Allegation (H) Abuse of Authority: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton threatened to arrest § 87(2)(b)

Allegation (I) Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b)

It is undisputed that PO Hampton threatened to arrest § 87(2)(b)

§ 87(2)(b) (**Board Review 18**) testified that, when she heard the apartment door open, she walked into the living room and saw PO Hampton standing in the doorway. PO Hampton ordered § 87(2)(b) to reenter her bedroom, and § 87(2)(b) responded by asking PO Hampton if he possessed a court order. § 87(2)(b) did not testify that she made any other statements to PO Hampton, and she did not indicate that she raised her voice. § 87(2)(b) did not testify that she physically obstructed PO Hampton or made contact with him. PO Hampton grasped § 87(2)(b)'s arm and escorted her to her bedroom door before shoving her through the doorway. § 87(2)(b) reported that she sustained bruising to her arm from PO Hampton grabbing her, and she provided a photograph of this bruising (**Board Review 35**). § 87(2)(b) had to grab onto nearby furniture to keep herself from falling. § 87(2)(b) then asked PO Hampton why he was doing this, and PO Hampton replied in Spanish, "Be quiet or I will handcuff you and take you away

handcuffed.” PO Hampton closed the bedroom door, and § 87(2)(b) did not have any further interaction with the officers.

§ 87(2)(b) and § 87(2)(b) both testified that, after PO Hampton entered the apartment, § 87(2)(b) told PO Hampton to leave because he did not possess the necessary paperwork to enter the apartment. § 87(2)(b) also recounted that § 87(2)(b) told PO Hampton that there were children present. § 87(2)(b) and § 87(2)(b) did not testify that § 87(2)(b) made any other statements, raised her voice, or physically obstructed PO Hampton. PO Hampton responded by grasping § 87(2)(b)'s arms and shoving her into her bedroom. § 87(2)(b) also recounted that she told PO Hampton, “Don’t push the lady,” in reference to PO Hampton having pushed § 87(2)(b).

PO Hampton testified that, after the apartment door was opened, § 87(2)(b) told him that he could not enter the apartment. PO Hampton replied, “Ma’am, we’re coming in,” and he stepped inside. PO Hampton did not testify that § 87(2)(b) physically obstructed him from entering the apartment. After PO Hampton entered the apartment, § 87(2)(b) stood in front of him and yelled. PO Hampton did not testify that § 87(2)(b) made any physical contact with him, and he did not testify that she made any verbal threats. PO Hampton assessed that § 87(2)(b)'s yelling would impede the officers from granting § 87(2)(b) access to the apartment. PO Hampton ordered § 87(2)(b) to reenter her bedroom and informed § 87(2)(b) that she could be arrested for obstructing governmental administration. § 87(2)(b) reentered her bedroom. PO Hampton denied that he shoved § 87(2)(b) and further denied making any physical contact with her. PO Hampton recounted that the door to § 87(2)(b)'s bedroom was closed after she went back into her bedroom, but PO Hampton could not recall if he closed the door himself.

PO Romano recalled that individuals inside the apartment were unhappy about the officers’ presence, but he could not recall if anyone inside the apartment objected to the officers’ entry. He reported that no other issues arose in escorting § 87(2)(b) to her bedroom. PO Romano did not recall seeing PO Hampton shove, threaten with arrest, or otherwise interact with § 87(2)(b).

The investigation obtained BWC and cellphone footage showing the conclusion of PO Hampton’s interaction with § 87(2)(b). The investigation did not obtain footage showing the period in which PO Hampton allegedly shoved and threatened to arrest § 87(2)(b). The cellphone footage, recorded by § 87(2)(b) (Board Review 29), shows PO Hampton standing briefly in the threshold of § 87(2)(b)'s bedroom door, with § 87(2)(b) immediately inside the bedroom, before PO Hampton closes the bedroom door. Both the cellphone footage and PO Hampton’s BWC footage (Board Review 30) show the bedroom door immediately reopening and § 87(2)(b) standing immediately inside the bedroom asking for “an order” and stating that there are small children on scene. § 87(2)(b) speaks at a normal volume and does not yell at PO Hampton. PO Hampton immediately approaches the bedroom door and closes it a second time. PO Hampton’s BWC footage also shows that § 87(2)(b) called 911 shortly after PO Hampton closed § 87(2)(b)'s bedroom door a second time, and that in recounting the incident to the 911 operator she reported that PO Hampton had pushed § 87(2)(b).

§ 87(2)(g)

Allegation (J) Abuse of Authority: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton damaged § 87(2)(b)'s property.

§ 87(2)(b) testified that, after PO Hampton shoved her into her bedroom, PO Hampton slammed the door closed. The following day, § 87(2)(b) observed a crack in the door, which she believed had been caused by PO Hampton's action. § 87(2)(b) provided a photograph of the damage (**Board Review 20**).

§ 87(2)(b) and § 87(2)(b) both testified that PO Hampton slammed § 87(2)(b)'s bedroom door closed. Neither testified that PO Hampton's action damaged the door.

As noted in the analysis of Allegations H and I, above, video footage showed that PO Hampton closed § 87(2)(b)'s bedroom door twice. The footage showed PO Hampton closing the door at a rapid speed.

PO Hampton did not recall whether he slammed the door, and he never became aware that the door sustained any damage. PO Romano denied that PO Hampton slammed the door.

§ 87(2)(g)

Allegation (K) Force: On September 17, 2018, at § 87(2)(b) in Queens, Police Officer Scott Hampton used physical force against § 87(2)(b).

§ 87(2)(b) testified that, after PO Hampton entered the apartment, she said to PO Hampton, "Don't push the lady," in reference to PO Hampton having pushed § 87(2)(b). PO Hampton responded by approaching § 87(2)(b), grasping both of her arms, and attempting to shove her out of the apartment. PO Hampton shoved § 87(2)(b) against a wall. While shoving § 87(2)(b), PO Hampton stepped on an unhealed burn on § 87(2)(b)'s left foot, which caused her pain.

§ 87(2)(b) testified that, after PO Hampton entered the apartment, § 87(2)(b) said to PO Hampton, "Step out, calm down, and then come back in." PO Hampton responded by approaching § 87(2)(b), grasping both of her arms, and attempting to shove § 87(2)(b) out of the apartment. PO Hampton shoved § 87(2)(b) against a wall and stepped on her foot in the process. § 87(2)(b) testified that she never saw § 87(2)(b) on the scene, and therefore did not see PO Hampton push her in the manner alleged.

§ 87(2)(b)'s medical records from § 87(2)(b) (**Board Review 34**) indicate that § 87(2)(b) requested an evaluation because she was pregnant and experiencing abdominal pain stemming from her interaction with PO Hampton. The records do not indicate that the hospital evaluated any injury to § 87(2)(b)'s foot.

PO Hampton denied shoving § 87(2)(b) and stated that he did not believe he stepped on her foot. PO Hampton recounted that § 87(2)(b) placed both of her hands on his back and told him that he could not enter the apartment shortly after he entered. PO Hampton responded by placing both of his hands on § 87(2)(b)'s arms without grasping or applying pressure. PO Hampton ordered § 87(2)(b) to step

back and she complied. PO Hampton prepared a TRI Report (**Board Review 21**) which noted that he unintentionally stepped on § 87(2)(b)'s left foot, prompting her to complain of pain and request a medical evaluation. After reviewing the report at his CCRB interview, PO Hampton testified that the document did not change his memory of the incident and he did not wish to add anything to his statement.

PO Romano did not recall PO Hampton shoving § 87(2)(b) or stepping on her foot.

§ 87(2)(g)

Allegation (L) Abuse of Authority: On September 17, 2018 Police Officer Scott Hampton entered the basement of § 87(2)(b) in Queens.

It is undisputed that PO Hampton entered the basement of the building without possessing a warrant to do so.

Video footage from PO Hampton's BWC (**Board Review 22**) shows that § 87(2)(b) and § 87(2)(b) walked along the exterior of the building to a locked door leading to the basement area, followed by PO Hampton. § 87(2)(b) asked PO Hampton, "Do you have to follow me?" and PO Hampton replied, "Ma'am, you're the suspect in a criminal complaint." § 87(2)(b) unlocked the basement door and stepped inside, but did not hold the door open for PO Hampton. PO Hampton pushed the door open before it closed fully, and followed § 87(2)(b) into the basement. § 87(2)(b) retrieved the tools within a few seconds, and both she and PO Hampton exited the basement.

§ 87(2)(b) testified (**Board Review 17**) that only she, her husband, and the building superintendent had access to the basement. § 87(2)(b) recounted that PO Hampton told her that he was following her to the basement because she was a "criminal." § 87(2)(b) account of this portion of the incident was consistent with that of § 87(2)(b).

PO Hampton testified that he accompanied § 87(2)(b) to the basement in order to ensure that she was complying with her legal obligation to grant § 87(2)(b) access to the apartment. He could not recall whether he entered the basement or waited outside the basement door.

Absent consent, exigent circumstances, or emergency circumstances, an officer may not make a warrantless entry into a given premises in which an individual has a legitimate expectation of privacy. Factors germane to determining whether an individual has such an expectation include whether the individual took precautions to maintain privacy in the premises, and whether the individual possessed the right to exclude others from the premises. People v. Rodriguez, 69 N.Y.2d 159 (1987) (**Board Review 23**).

§ 87(2)(g)

§ 87(2)(g)

§ 87(4-b), § 87(2)(g)

Civilian and Officer CCRB Histories

- This is the first CCRB complaint to which § 87(2)(b) (Board Review 25), § 87(2)(b) (Board Review 26), § 87(2)(b) (Board Review 27), and § 87(2)(b) (Board Review 28) have been party.
- PO Guevara has been a member of the NYPD for four years and this is the first CCRB complaint in which he has been a subject.
- PO Lucio has been a member of the NYPD for 14 years and has been a subject in one additional CCRB complaint and two allegations, neither of which was substantiated. § 87(2)(g)
- PO Hampton has been a member of the NYPD for three years and has been a subject in one additional CCRB complaint and 17 allegations, none of which was substantiated.
 - 201905096 involves allegations of entry of premises, threat of arrest, threat of force, discourtesy, and detention pleaded against PO Hampton. To date this investigation is still open.
- PO Romano has been a member of the NYPD for one year and this is the first CCRB complaint in which he has been a subject.

Mediation, Civil and Criminal Histories

- This complaint was not suitable for mediation.
- On September 17, 2019, the NYC Office of the Comptroller confirmed that no Notice of Claim had been filed regarding this incident (**Board Review 31**).
- § 87(2)(b), § 87(2)(c)

Squad No.: _____

Investigator: _____

Signature _____ Print Title & Name _____ Date _____

Squad Leader: _____

Signature _____ Print Title & Name _____ Date _____

Reviewer: _____

Signature _____ Print Title & Name _____ Date _____